

### REMARKS

Claims 1, 2, 4, 7-12, and 47-50 were previously pending, of which claims 1 and 47-50 are independent. Claims 3, 5, 6, and 13-46 were previously cancelled without prejudice to or disclaimer of the subject matter therein. Claims 1 and 47-50 are amended. Reconsideration of the claims is respectfully requested in light of the above amendments and the following remarks.

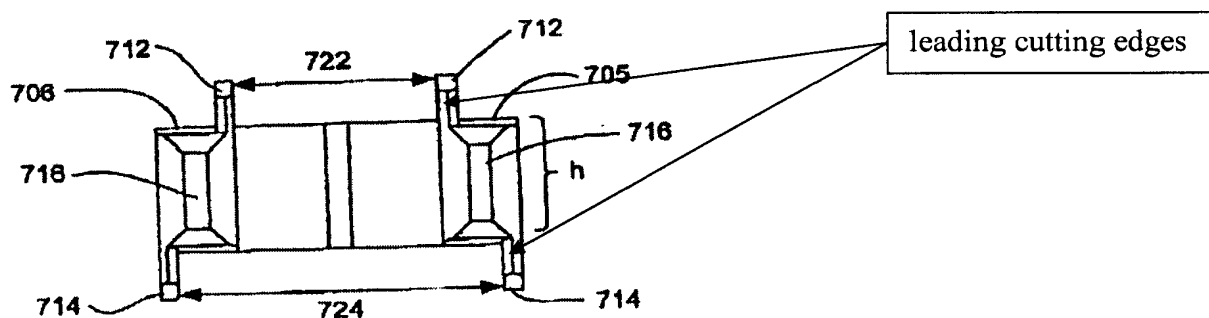
Applicants acknowledge the indication that claim 10 would be allowable if rewritten in independent form to include all the subject matter of its base claim.

#### Compliance with 35 U.S.C. § 102

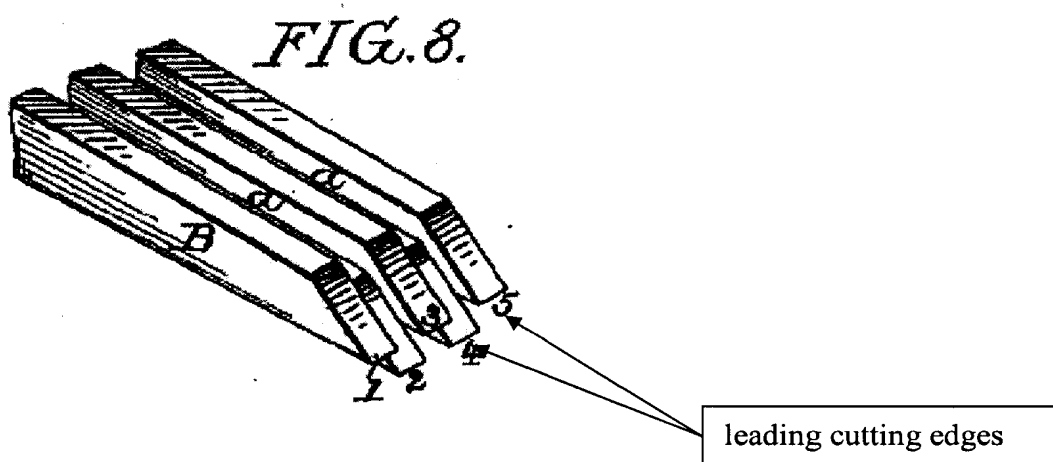
Claims 1, 2, 4, 7-9, 11, 12, and 47-50 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 482,704 to Wall (hereinafter referred to as "Wall"). With respect to the claims as herein amended, this rejection is respectfully traversed.

#### Independent Claim 1

Claim 1 as amended requires "the first, second, third, and fourth cutting blades each comprise a leading cutting edge extending substantially parallel to one of the inner and outer sides of the first or second tines." As shown in Fig. 7C of the present application reproduced below, the leading cutting edge of each blade is substantially parallel to one of the inner and outer sides.



In contrast, Wall does not disclose any such leading cutting edges extending in the direction claimed. The Office Action identifies the cutting blades as reference nos. 1, 2, 3, and 4 in Fig. 8 of Wall, reproduced below. However, as shown below, the cutting blades all have a leading edge that extends horizontally relative to the sides of any tines.



Accordingly, the Wall reference lacks the claimed features. Further, turning the device of Wall on its side in order to render the cutting edges “parallel to one of the inner and outer sides of the first or second tines” still does not anticipate claim 1 because other features of claim 1 are then absent. For example, the device would then lack:

a first cutting blade extending from the upper surface of said first tine and flush with the inner side of said first tine;

a second cutting blade extending from the upper surface of said second tine and flush with the inner side of said second tine and, said first and second cutting blades extending in a first direction from said first and said second tines; wherein the first and second cutting blades are adapted to cut a first pair of grooves in a first vertebral body in the first direction;

a third cutting blade extending from the lower surface of said first tine and flush with the outer side of said first tine; and

a fourth cutting blade extending from the lower surface of said second tine and flush with the outer side of said second tine and, said third and fourth cutting blades extending in a second direction from said first and said second tines and said third and fourth cutting blades are placed further apart than the first and second cutting blades; wherein the third and fourth cutting blades are adapted to cut a second pair of grooves in a second vertebral body in the second direction; wherein the second direction is opposite from the first direction and the first and second pair of grooves are cut simultaneously in the first and second vertebral bodies.

Accordingly, claim 1 as amended is allowable over Wall. Applicants respectfully request that the Examiner withdraw the rejection and allow this claim.

Independent Claim 47

Claim 47 is amended to recite, among other features:

(b) a first pair of cutting blades protruding upwardly from the cutter body and adapted to cut a first pair of grooves in the upper vertebral body, wherein each blade of the first pair of blades is parallel to one another, and each blade of the first pair of blades includes a leading cutting edge extending in the upward direction above the cutter body; and

(c) a second pair of cutting blades protruding downwardly from the cutter body and adapted to cut a second pair of grooves in the lower vertebral body, wherein each blade of the second pair of blades is parallel to one another, and each blade of the second pair of blades includes a leading cutting edge extending in the downward direction below the cutter body, wherein the second pair of cutting blades are placed further apart than the first pair of cutting blades and wherein the first and second pair of cutting blades are parallel to one another.

Wall does not disclose any tool with first and second pairs of cutting blades as recited where “each blade of the first pair of blades includes a leading cutting edge extending in the upward direction above the cutter body” and where “each blade of the second pair of blades includes a leading cutting edge extending in the downward direction below the cutter body.”

Further, turning the device of Wall on its side in order to render the cutting edges “extending in the upward direction” or the downward direction still does not anticipate claim 47 because other features of claim 47 are then absent.

Accordingly, claim 47 as amended is allowable over Wall. Applicants respectfully request that the Examiner withdraw the rejection and allow this claim.

Claim 47 is further amended to provide clarity to the claim by more particularly reciting the claimed subject matter. These amendments are not intended to limit the intent or coverage of the claim.

Independent Claim 48

Claim 48 is amended to recite, among other features, first and second pairs of cutting blades:

wherein each blade of the first pair of cutting blades and each blade of the second pair of cutting blades comprises a leading cutting edge extending in a direction substantially parallel to the sagittal plane.

Wall does not disclose any tool with first and second pairs of cutting blades as recited where “each blade of the first pair of cutting blades and each blade of the second pair of cutting blades comprises a leading cutting edge extending in a direction substantially parallel to the sagittal plane.” Accordingly, claim 48 as amended is allowable over Wall. Applicants respectfully request that the Examiner withdraw the rejection and allow this claim.

Further, turning the device of Wall on its side in order to extend the cutting edges “in a direction substantially parallel to the sagittal plane” still does not anticipate claim 48 because other features of claim 48 are then absent.

Claim 48 is further amended to provide clarity to the claim by more particularly reciting the claimed subject matter. These amendments are not intended to limit the intent or coverage of the claim.

Independent Claim 49

Claim 49 is amended to recite, among other features:

- b. a first pair of cutting blades protruding upwardly from the cutter body and adapted to cut a first pair of grooves in the upper vertebral body, each blade of the first pair of blades including a leading cutting edge extending in the upward direction above the cutter body; and
- c. a second pair of cutting blades protruding downwardly from the cutter body and adapted to cut a second pair of grooves in the lower vertebral body, each blade of the second pair of blades including a leading cutting edge extending in the downward direction below the cutter body, wherein the second pair of cutting blades are placed further apart than the first pair of cutting blades and wherein the first and second pair of cutting blades are parallel to one another.

Wall does not disclose any tool with first and second pairs of cutting blades as recited where “each blade of the first pair of blades including a leading cutting edge extending in the upward direction above the cutter body” and where “each blade of the second pair of blades including a leading cutting edge extending in the downward direction below the cutter body.”

Further, turning the device of Wall on its side in order to render the cutting edges “extending in the upward direction” or the downward direction still does not anticipate claim 49 because other features of claim 49 are then absent.

Accordingly, claim 49 as amended is allowable over Wall. Applicants respectfully request that the Examiner withdraw the rejection and allow this claim.

Claim 49 is further amended to provide clarity to the claim by more particularly reciting the claimed subject matter. These amendments are not intended to limit the intent or coverage of the claim.

Independent Claim 50

Claim 50 is amended to recite, among other features,

- b. a first pair of cutting blades protruding upwardly from the cutter body and adapted to cut a first pair of grooves in the upper vertebral body, each

blade of the first pair of blades including a leading cutting edge extending in the upward direction above the cutter body; and

c. a second pair of cutting blades protruding downwardly from the cutter body and adapted to cut a second pair of grooves in the lower vertebral body, each blade of the second pair of blades including a leading cutting edge extending in the downward direction above the cutter body, wherein the second pair of cutting blades are placed further apart than the first pair of cutting blades and wherein the cutting blades of the first and second pairs of cutting blades are parallel to one another.

Wall does not disclose any tool with first and second pairs of cutting blades as recited where “each blade of the first pair of blades including a leading cutting edge extending in the upward direction above the cutter body” and where “each blade of the second pair of blades including a leading cutting edge extending in the downward direction above the cutter body.”

Further, turning the device of Wall on its side in order to render the cutting edges “extending in the upward direction” or the downward direction still does not anticipate claim 50 because other features of claim 50 are then absent.

Accordingly, claim 50 as amended is allowable over Wall. Applicants respectfully request that the Examiner withdraw the rejection and allow this claim.

Claim 50 is further amended to provide clarity to the claim by more particularly reciting the claimed subject matter. These amendments are not intended to limit the intent or coverage of the claim.

#### Dependent Claims 2, 4, and 7-12

Dependent claims 2, 4, and 7-12 depend from claim 1 and also are believed to be distinct from the art of record at least for similar reasons as discussed above with respect to claim 1. Applicants respectfully request that the Examiner withdraw the rejection of these claims.

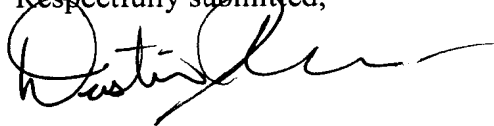
Conclusion

For at least the reasons set forth above, Applicants respectfully request that the Examiner reconsider and issue a formal notice of allowance.

The Examiner has made characterizations of the claims and the related art to which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statements or characterizations made by the Examiner in this or other Office Actions. If the Examiner believes a telephone conversation would be useful for advancing prosecution of this application, she is invited to telephone the undersigned at 972-739-6969.

No fees are believed necessary for consideration of the present paper. However, if any fees, including extension of time fees, are necessary, Applicants hereby petition for the extension of time, and the Commissioner is hereby authorized to charge any fees, including those for the extension of time to Haynes and Boone, LLP's Deposit Account No. 08-1394.

Respectfully submitted,




Dustin T. Johnson  
Registration No. 47,684

Dated: January 22, 2008

HAYNES AND BOONE, LLP  
Customer No.: 46333  
Telephone: 972/739-6969  
Facsimile: 214/200-0853  
Matter No.: 31132.783  
Document No.: R-185415

**Certificate of Service**

I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on January 22, 2008.

  
Diane Sutton